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FROM: TOM SWEGLE

NUMBER OF PAGES (INCLUDING COVER SHEET): 5

DATE: 9/15/98

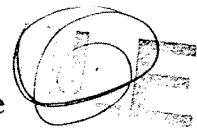
<u>DOJ TELEFAX NUMBER</u>	<u>CONFIRMATION NUMBER</u>	<u>ROOM</u>
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MESSAGE:

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U.S. Department of Justice



Environment and Natural Resources Division

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September 14, 1998

BY FACSIMILE TRANSMISSION

Thomas Greenland
Union Pacific Railroad Co.
Law Department
1416 Dodge Street
Omaha, Nebraska 68179

Re: Union Pacific Railroad Wallace-Mullan Branch Rails-to-
Trails Conversion

Dear Tom:

As you are probably aware, technical representatives from all parties involved with the Union Pacific-Coeur d'Alene Basin negotiations walked the Wallace-Mullan rail-line the week of August 24 and identified a number of technical issues that must be resolved prior to concluding our negotiations. To move this process forward, this letter lists the major issues identified and discussed during that field visit.

1. Non-residential barrier width. The parties are attempting to establish some measurable "prescription" for trail construction based on our conceptual agreement to "cover the ballast." Based on observations in the field, there is concern that in areas where the railbed is elevated less than 18 inches above the existing adjacent grade, the proposed combination of asphalt trail, shoulder and 2:1 slope will potentially not cover all the ballast. This is particularly applicable where past railroad activities may have squeezed the ballast outside the narrow area planned to be covered. As discussed in our August field trip, preferentially grading in toward the center while preparing the bed for the trail will help obviate the problem. There is concern, however, that this measure alone will not assure that the problem will be eliminated. A method of dealing with this issue would be to presume a minimum trail width (asphalt trail/shoulder/slope) of 20 feet in those areas with an elevation of less than 18 inches. The 20 foot minimum presumption could be rebutted at points where there are physical constraints which preclude applying a 20 foot width, such as adjacent rock outcrops

or steep slopes adjacent to the railbed.

2. Field discretion during construction. While the parties have tried to be as prescriptive as possible on extension of barriers, it has become apparent that determining the barrier extent will require some exercise of field discretion. For example, the barrier may extend to the "toe of slope" or to the "woody vegetation." Furthermore, there may be changed field conditions or previously unnoticed conditions that will require some change to the barrier type, width, and/or length prescription. It is expected that the oversight entities will be able to work with the contractor to work through these changes. As in any Consent Decree, we will develop appropriate language to handle disagreements that may arise in the field regarding response activities.

3. Extraneous areas. While some UPRR properties will be explicitly carved out of this settlement (e.g. Wallace Yard and Canyon Creek spur), other areas, including various spurs, rail lines, and mine dumps, still need to be addressed in some manner. We need to work to define how to deal with these areas, particularly identifying any imminent problems that could impact the trail. For example, there are drainage and potential flooding issues associated with the Morning Mine Dump.

4. Residential encroachments on right-of-way. There are several apparent encroachments on the UP right of way (ROW), most notably in Osburn. We must determine whether these encroachments are intended to be allowed to remain in place after trail construction because of existing leases or arrangements with the owner of the encroachment. UPRR will be required to remediate the encroaching property, if necessary. If the use is residential, UPRR is expected to sample and remediate the property in the ROW according to the protocol developed in the EE/CA. UPRR also committed to identify all leases or other agreements for property on the ROW. To date the Trustees have not seen this information.

5. Wetlands. Where work will impact wetlands, UPRR must work with the appropriate oversight agency and develop a mitigation plan. For example, ties will be removed from one wetland area near Highway 3 and work will occur in another wetland area near the Morning Mine Dump.

6. Wildlife. There is a nesting pair of bald eagles near the trail at Springston. UPRR will work with U.S. Fish and Wildlife for appropriate consultation on this issue and other potential issues as required by the Endangered Species Act and Migratory

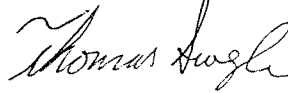
Bird Treaty Act.

7. Waste repository options. The parties discussed waste disposal alternatives to the Central Impoundment Area (CIA), which remains scheduled for closure in September 1999. Such alternatives will be identified by the governments in a subsequent letter.
8. Institutional controls. The government parties are developing a program to ensure the implementation of the various land use controls and trail maintenance functions that constitute an integral part of the potential remedy to protect human health along the ROW.
9. Human health risk assessment. The government parties continue to develop the risk assessment and resulting risk mitigation calculations, considering receptors, sampling data, and exposure pathways.
10. Updated data set. MFG has agreed to provide a consolidated comprehensive set of all environmental data related to the ROW for review and consideration by all parties.
11. Updated Drawings. MFG also committed to prepare a new annotated set of drawings reflecting information from the recent field visit. We will work with MFG by commenting on a draft version of these drawings so that they reflect everyone's understanding.
12. Consultation with Surface Transportation Board. The parties need to understand the process for seeking a CITU from the STB, given the understanding that the present CERCLA process should satisfy any substantive requirements.

While this list may not be considered exhaustive, it should reflect the major issues which the government parties believe need to be resolved in the near term. As this project continues

to develop, additional issues will certainly arise, and the governments will remain committed to resolving such issues with finality and a cooperative spirit. If you have any questions about the issues identified in this letter, please call me or make a note to discuss the issue at our next meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas Swegle".

Thomas W. Swegle

cc: Howard Funke
Curt Fransen
Cliff Villa